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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,930	08/16/2000	Daniel Schmoutz	008265-0340-999	1428

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PATENT DEPARTMENT
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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HC

Office Action Summary

Application No.	Applicant(s)
09/617,930	Schmoutz et al.
Examiner	**Art Unit**
Lien Tran	1761

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) [X] Responsive to communication(s) filed on *Apr 7, 2003*.

2a) [ ] This action is **FINAL**. 2b) [X] This action is non-final.

3) [ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) [X] Claim(s) *1-14 and 29-41* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) [ ] Claim(s) _____ is/are allowed.

6) [X] Claim(s) *1-6, 8-14, and 29-41* is/are rejected.

7) [X] Claim(s) *7* is/are objected to.

8) [ ] Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) [ ] The specification is objected to by the Examiner.

10) [ ] The drawing(s) filed on _____ is/are a) [ ] accepted or b) [ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) [ ] The proposed drawing correction filed on _____ is: a) [ ] approved b) [ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) [ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) [ ] Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) [ ] All b) [ ] Some* c) [ ] None of:

1. [ ] Certified copies of the priority documents have been received.
2. [ ] Certified copies of the priority documents have been received in Application No. _____.
3. [ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) [ ] The translation of the foreign language provisional application has been received.

15) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) [X] Notice of References Cited (PTO-892)
2) [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) [ ] Information Disclosure Statement(s) (PTO-1449) Paper No(s).
4) [ ] Interview Summary (PTO-413) Paper No(s).
5) [ ] Notice of Informal Patent Application (PTO-152)
6) [ ] Other.

1. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The vegetable " rutabaga" in claim 6 is not disclosed in the specification or the original claims.

2. Claims 1-5,10-12,13,14 and 29-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over De 2746479.

DE 2746479 discloses a shaped confectionery containing 5-75% shredded beet, bran or vegetable fibers. The shredded and dried beets may be used in form of finely divided powder or a coarse granule. As set forth in the examples, the products contains chocolate mass , cocoa butter, whole milk butter or whole milk powder; all these ingredients added up to meet the claimed fat content. The patent discloses adding wheat bran which is a cereal component. The amount in example 1 is 15% which meets the claimed limitation of up to 40% by weight.

DE 2746479 does not disclose, the sugar content and water activity, the size of the vegetable as claimed, at least 25% of fat consisting essentially of cocoa butter or derivative thereof and vegetable fat, the layering of the bars to form a multilayer confectionery product, the use of the bar as the center filling of a fat-based chocolate shell, coating of the product with chocolate and placing the product with a wafer or biscuit.

De 2746479 discloses 21% cocoa butter; the remaining percentage of fat differs from the kind of fat claimed. However, it would have been obvious to one skilled in the to select different type of fat depending on the flavor, taste desired. Different type of fat provides different flavoring and taste and such taste varies among individual. Applicant has not shown any unexpected property from the claimed type of fat. While the sugar content in the reference is higher, the amount of sugar added is determined by the degree of sweetness desired. It would have been obvious to one skilled in the art to add less sugar if a less sweet product is wanted. Applicant discloses in the specification the amount of sugar in the claimed product can be up to 55%. The water activity is dictated by the sugar content; since the product in the reference contains higher amount of sugar than the claimed product, it is expected the water activity is the same as claimed. It would also have been obvious to grind the vegetable solid to any particle size depending on the taste perception desired. For example, if a noticeable taste of the vegetable solid is desired, it would have been obvious to grind the solid to big particles or if a very little taste of the solid is desired, it would have been obvious to reduce the vegetable to very fine particles. The type of sugar used would have been an obvious variation depending on the degree of sweetness and taste desired. One type of sugar has a different degree of sweetness from the other and a different flavor and taste. It would also have been obvious to layer the bar to obtain a multilayer confectionery product to provide different novelties. This is notoriously well known in the art. It would also have been obvious to coat the product with chocolate coating to obtain different taste and flavor. Food bars are commonly coated with chocolate coating. It would also have been

obvious to use the bar as center material because there are many variations to food bar and modification to obtain different novelty products having different taste, appearance, texture would have been within the skill of one in the art through routine experimentation. As to consuming the product with a wafer or a biscuit, this would have been an obvious many of choice. Wafer products are filled with different materials such as ice cream, mousse, cream filling etc...

3. Claims 6,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2746479 in view of the articles " Fiber in vegetable helps prevent colon cancer".

DE 2746479 discloses a shaped confectionery containing 5-75% shredded beet, bran or vegetable fibers. The shredded and dried beets may be used in form of finely divided powder or a coarse granule. As set forth in the examples, the products contains chocolate mass , cocoa butter, whole milk butter or whole milk powder; all these ingredients added up to meet the claimed fat content. The patent discloses adding wheat bran which is a cereal component. The amount in example 1 is 15% which meets the claimed limitation of up to 40% by weight.

DE 2746479 does not disclose, the sugar content and water activity, at least 25% of fat consisting essentially of cocoa butter or derivative thereof and vegetable fat, the vegetable as claimed and the ratio of vegetable solid to fat.

The articles disclose that vegetables such as light green and yellow-orange vegetables, broccoli, corn, carrots, garlic are high-fiber vegetables.

The gist of the De 2746479 disclosure is the making of confectionery bar containing a large amount of dietary fiber. Thus, it would have been obvious to one skilled in the art to add

other materials having a high fiber content. The patent discloses suitable dietary fiber materials include ground plant fiber; thus, this can includes vegetable fiber. It would have been obvious to one to add vegetables such as broccoli, corn, carrot, garlic because these are known to have high fiber content. It would have been obvious to one to add vegetables when the taste for such vegetables is desired and the requirement of the fiber content is met. De 2746479 discloses 21% cocoa butter; the remaining percentage of fat differs from the kind of fat claimed. However, it would have been obvious to one skilled in the to select different type of fat depending on the flavor, taste desired. Different type of fat provides different flavoring and taste and such taste varies among individual. Applicant has not shown any unexpected property from the claimed type of fat. While the sugar content in the reference is higher, the amount of sugar added is determined by the degree of sweetness desired. It would have been obvious to one skilled in the art to add less sugar if a less sweet product is wanted. Applicant discloses in the specification the amount of sugar in the claimed product can be up to 55%. The water activity is dictated by the sugar content; since the product in the reference contains higher amount of sugar than the claimed product, it is expected the water activity is the same as claimed. It would have been obvious to vary the solid:fat ratio depending on the amount of fat and vegetable solid desired.

4. Claim 7 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion in the prior art to replace the cocoa solids, sugar solid or milk solid in the chocolate with the vegetable solid.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 2, 2003

Lien Tran

SUPERVISORY PATENT EXAMINER

Group 1762